UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/742,534	12/21/2000	Charles A. Eldering	T721-18	6855

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EXAMINER
SHELEHEDA, JAMES R

ART UNIT	PAPER NUMBER
2617	

DATE MAILED: 07/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>08 June 2005</u>.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,2,4-17,20,22-28,32-34,36 and 38-51* is/are pending in the application.

  4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *13-17, 26-28, 32-34, 36, 38-50* is/are allowed.

6)☒ Claim(s) *1,2,4-12,20,22,23 and 51* is/are rejected.

7)☒ Claim(s) *24 and 25* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

  Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

  Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

  a)☐ All b)☐ Some * c)☐ None of:

  1.☐ Certified copies of the priority documents have been received.

  2.☐ Certified copies of the priority documents have been received in Application No. _____.

  3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
  application from the International Bureau (PCT Rule 17.2(a)).

  * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>6/8/05</u>.

4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____ .

DETAILED ACTION

Claim Rejections - 35 USC § 103

1.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

2.   Claims 1, 2, 4-8 and 10-12 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Hendricks et al. (Hendricks) (6,463,585) (of record).

As to claim 1, Hendricks discloses a method of transmitting television

programming and advertising from a headend to subscribers at a plurality of subscriber

nodes (column 18, lines 20-32), said method comprising the steps of:

(a) creating a plurality of subscriber groups (Fig. 32; column 26, lines 54-67 and

column 72, lines 23-45), members of said subscriber groups being based on at least

one characteristic of said subscriber relevant to advertising (column 29, lines 33-44);

(b) receiving at least one programming channel of television programming

(column 18, lines 38-64);

(c) forming from said at least one programming channel a plurality of

presentation channels of television programming (feeder channels containing alternative

ads assigned to the particular program channel; column 29, line 61-column 30, line 25)

identical to said at least one programming channel (identical in advertisement

placements and timeslots; column 30, lines 8-53), each presentation channel

corresponding to one of the subscriber groups (column 30, lines 45-53);

(d) storing a plurality of advertisements for insertion into advertising avails in said

presentation channels (column 31, lines 28-55);

(e) storing for the presentation channel a list of advertisements (column 31, lines

28-36);

(f) determining advertising avails in each of said presentation channels (column

30, lines 8-29 and column 31, lines 7-27);

(g) for each presentation channel, determining an advertisement to be inserted in

each avail in said presentation channel (column 31, lines 28-55);

(h) inserting said advertisement determined in step (g) into said corresponding

avail (column 31, lines 28-55); and

(i) transmitting each of said presentation channels to at least those subscriber

nodes in said subscriber group corresponding to said presentation channel (wherein

every subscriber receives each alternative ad channel and tunes to one dependent

upon their group; column 18, lines 20-32, column 30, lines 25-54 and column 72, lines

23-45).

While Hendricks discloses storing a listing of advertisements and inserting the

advertisements into the presentation channels based upon the list, he fails to disclose

the use of queues comprising an ordered list of advertisements resource locators, said

ARL's comprising a pointer to a location of a corresponding advertisement and inserting

the advertisements in accordance with the queue.

The examiner takes Official Notice that it was notoriously well known in the art at the time of invention by applicant to utilize a queue to properly indicate the order in which actions are to be performed, such as the order in which upcoming advertisements are to be inserted, for the typical benefit of reducing processing requirements and providing more time to correctly perform a function by indicating, in advance, an order in which particular functions (such as ad insertion) are to be performed.

Further, the examiner takes Official Notice that it was notoriously well known in the art to utilize pointers which indicate the location of corresponding data, instead of manipulating the data itself, for the typical benefits of reducing memory and processor requirements by only manipulating location pointers instead of the data in it's entirety.

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Hendricks' system to include queues comprising an ordered list of advertisements and inserting the advertisements in accordance with the queue for the typical benefit of reducing processing requirements and providing more time to correctly perform a function by indicating, in advance, an order in which particular functions (such as ad insertion) are to be performed.

Further, it would have been obvious to one of ordinary skill in the art at the time of invention by applicant to further modify Hendricks's system to include wherein said list comprises (ARLs) comprising a pointer to a location of a corresponding advertisement for the typical benefits of reducing memory and processor requirements by only manipulating location pointers instead of the data in it's entirety.

As to claim 2, Hendricks discloses wherein each subscriber group comprises a set of subscribers that is mutually exclusive of each other subscriber group (wherein groups based solely upon ADI, or location, are inherently mutually exclusive; column 26, lines 54-67).

As to claim 4, Hendricks discloses assigning each subscriber to one or more subscriber groups (column 27, lines 1-6 and column 72, lines 23-45).

As to claim 5, Hendricks discloses creating wherein step (j) includes creating an advertising group map disclosing an advertising group to which each subscriber belongs (group assignment matrix; see column 32, Table E) and transmitting said advertising group map to said subscriber nodes (column 29, lines 45-60).

As to claim 6, Hendricks discloses wherein step (j) includes creating a presentation channel map disclosing to which advertising group each presentation channel corresponds (see table F, column 33) and wherein, responsive to receipt of said advertising group map, said subscriber nodes determine to which advertising group they belong (column 72, lines 23-45), and, responsive to receipt of said presentation channel map, said subscriber nodes create an individual channel map indicating which of said plurality of presentation channels corresponding to said at least one programming channel said subscriber node is to select when a user of said node selects one of said programming channels to view (column 72, lines 23-45).

As to claim 7, Hendricks discloses wherein step (j) includes transmitting all of

said presentation channels to all of said subscriber nodes (wherein every subscriber

receives each alternative ad channel and tunes to one dependent upon their group;

column 18, lines 20-32, column 30, lines 25-54 and column 72, lines 23-45).

As to claim 8, Hendricks discloses wherein, responsive to a user making a

channel selection corresponding to one of said programming channels (the user

selecting a particular program and channel to view; column 72, lines 40-45), said

subscriber nodes select one of said presentation channels corresponding to said

programming channel selected by said user in accordance with said individual channel

maps (column 72, lines 23-45).

As to claim 10, Hendricks discloses wherein said advertisements are stored in

digital form (wherein all signals are converted to and used in digital form; column 18,

line 65-column 19, line 40).

As to claim 11, Hendricks discloses wherein said advertisements are stored in

MPEG form (column 19, lines 30-40).

As to claim 12, Hendricks discloses wherein said at least one programming

channel and said presentation channels are in digital format (wherein all signals are

received in/converted to digital form for storage and use; column 18, line 65-column 19, line 40).

3.   Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hendricks as applied to claim 1 above, and further in view of Safadi (6,487,721) (of record).

As to claim 9, while Hendricks discloses wherein said programming channel includes avails, he fails to specifically disclose wherein said programming channel includes indicators that identify the start of an avail and detecting said indicators.

In an analogous art, Safadi discloses a video server (Fig. 2) which detects indicators (cue commands) that identify the start of an ad avail (commercial insertion point; column 9, lines 13-25) in a program channel (column 4, lines 30-55 and column 9, lines 13-25) and wherein advertisements are then inserted into the detected avail (column 9, lines 13-25) for the typical benefit of allowing advertisements to be inserted into specific locations designated by a content provider (column 1, lines 26-42).

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Hendricks' system to include the wherein said programming channel includes indicators that identify the start of an avail and detecting said indicators, as taught by Safadi, for the typical benefit of allowing content providers to specifically indicate where advertisements are to be inserted.

4.   Claims 20, 22, 23 and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hendricks in view of Yuen et al. (Yuen) (6,252,634).

As to claim 51, while Hendricks discloses an apparatus for transmitting television programming and advertising from a headend to subscribers at a plurality of subscriber nodes (Fig. 1; column 18, lines 20-32), the apparatus comprising:

a receiver for receiving a plurality of programming channels of television programming (column 18, lines 38-64);

a first memory (advertisement/promotional module, 287) for storing a plurality of advertisements for insertion into advertising avails into presentation channels (column 31, lines 28-55);

a second memory (advertisement/promotional module, 287) storing, for the presentation channels, a list of advertisements (column 31, lines 28-36);

a circuit (break management engine, 305) for determining advertising avails in each of said presentation channels (column 30, lines 8-29 and column 31, lines 7-27);

an advertisement management circuit (spot placement engine, 307) coupled to said second memory (Fig. 4a) and adapted to determine which advertisements are to be inserted in which avails in said presentation channels (column 31, lines 28-55), said advertisement management circuit configured to generate an advertising group map disclosing an advertising group to which each subscriber belongs (group assignment matrix; see column 32, Table E);

an advertisement insertion circuit coupled to said presentation channels and adapted to insert said advertisements into said avails (column 31, lines 28-55 and column 72, lines 57-64); and

a transmitter adapted to transmit said plurality of presentation channels (column 18, lines 20-32, column 30, lines 25-54 and column 72, lines 23-45) and said advertising group map to said subscriber nodes (column 72, lines 23-45).

While Hendricks discloses storing a listing of advertisements and inserting the advertisements into presentation channels based upon the list, he fails to disclose the use of queues comprising an ordered list of advertisements resource locators, said ARL's comprising a pointer to a location of a corresponding advertisement, inserting the advertisements in accordance with the queue and a plurality of splitters, each splitter splitting a programming channel into a plurality of presentation channels.

The examiner takes Official Notice that it was notoriously well known in the art at the time of invention by applicant to utilize a queue to properly indicate the order in which actions are to be performed, such as the order in which upcoming advertisements are to be inserted, for the typical benefit of reducing processing requirements and providing more time to correctly perform a function by indicating, in advance, an order in which particular functions (such as ad insertion) are to be performed.

Further, the examiner takes Official Notice that it was notoriously well known in the art to utilize pointers which indicate the location of corresponding data, instead of manipulating the data itself, for the typical benefits of reducing memory and processor requirements by only manipulating location pointers instead of the data in it's entirety.

Additionally, in an analogous art, Yuen discloses a television transmission system (Fig. 2) wherein programming channels from a plurality of sources (WGN, KABC, KCET etc...; see Figs. 2 and 6) are transmitted to a plurality of splitters which

split the channels into a plurality of presentation channels (wherein the signals are split

to be transferred to individual local cable companies; see Figs. 2 and 6) for the typical

benefit of allowing a plurality of local cable companies to all receive broadcast television

content (column 4, lines 27-44 and as seen in Figs. 2 and 6).

It would have been obvious to one of ordinary skill in the art at the time of

invention by applicant to modify Hendricks' system to include queues comprising an

ordered list of advertisements and inserting the advertisements in accordance with the

queue for the typical benefit of reducing processing requirements and providing more

time to correctly perform a function by indicating, in advance, an order in which

particular functions (such as ad insertion) are to be performed.

Further, it would have been obvious to one of ordinary skill in the art at the time

of invention by applicant to further modify Hendricks's system to include wherein said

list comprises (ARLs) comprising a pointer to a location of a corresponding

advertisement for the typical benefits of reducing memory and processor requirements

by only manipulating location pointers instead of the data in it's entirety.

Additionally, it would have been obvious to one of ordinary skill in the art at the

time of invention by applicant to further modify Hendricks's system to include a plurality

of splitters, each splitter splitting a programming channel into a plurality of presentation

channels, as taught by Yuen, for the typical benefit of allowing television content to be

received by a plurality of local cable companies.

As to claim 20, Hendricks and Yuen disclose wherein said subscriber nodes comprise:

a receiver for receiving at least some of said presentation channels (see Hendricks at column 72, lines 40-45) and said advertising group map (see Hendricks at column 72, lines 23-45); and

a circuit for determining, based on said received advertising group map, to which advertising group the subscriber node belongs (see Hendricks at column 72, lines 23-45).

As to claim 22, Hendricks and Yuen disclose wherein said advertising management circuit generates a presentation channel map disclosing to which advertising group map each presentation channel corresponds (see Hendricks at table F, column 33), and causes said transmitter to transmit said presentation channel map to said subscriber nodes (see Hendricks at column 72, lines 23-45).

As to claim 23, Hendricks and Yuen disclose wherein said subscriber nodes further comprise:

a circuit for generating, responsive to receipt of said presentation channel map, an individual channel map dictating which of said plurality of presentation channels corresponding to said at least one programming channel said subscriber node is to select (column 72, lines 23-45) when a user of said subscriber node selects one of said programming channels to view (column 72, lines 40-45).

Response to Arguments

5.   The Official Notice presented in the prior action stating that it was notoriously well

known in the art to utilize pointers which indicate the location of corresponding data was

not traversed and is accordingly taken to be an admission of fact.

Allowable Subject Matter

6.   Claims 13-17, 26-28, 32-34, 36 and 38-50 are allowed.

7.   Claims 24 and 25 are objected to as being dependent upon a rejected base

claim, but would be allowable if rewritten in independent form including all of the

limitations of the base claim and any intervening claims.

Conclusion

8.   The prior art made of record and not relied upon is considered pertinent to

applicant's disclosure.

     Doherty (US2003/0200128A1) directed towards displaying advertisements in

accordance with a schedule consisting of pointers to ad locations in memory.

     Guyot (6,119,098) directed towards inserting advertisements in accordance with

an ad queue.

9.   **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time

policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later

than SIX MONTHS from the mailing date of this final action.

10.   The following are suggested formats for either a Certificate of Mailing or
Certificate of Transmission under 37 CFR 1.8(a). The certification may be included with
all correspondence concerning this application or proceeding to establish a date of
mailing or transmission under 37 CFR 1.8(a). Proper use of this procedure will result in
such communication being considered as timely if the established date is within the
required period for reply. The Certificate should be signed by the individual actually
depositing or transmitting the correspondence or by an individual who, upon information
and belief, expects the correspondence to be mailed or transmitted in the normal course
of business by another no later than the date indicated.

Certificate of Mailing

I hereby certify that this correspondence is being deposited with the United States Postal Service with
sufficient postage as first class mail in an envelope addressed to:

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P.O. Box 1450
Alexandria, VA 22313-1450

on _____.
    (Date)

Typed or printed name of person signing this certificate:

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I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office, Fax No. (703)_____ - _____ on _____.
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Typed or printed name of person signing this certificate:

_____

Signature: _____

Registration Number: _____

Please refer to 37 CFR 1.6(d) and 1.8(a)(2) for filing limitations concerning facsimile transmissions and mailing, respectively.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Sheleheda whose telephone number is (571) 272-7357. The examiner can normally be reached on 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on (571) 272-7331. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

James Sheleheda
Patent Examiner
Art Unit 2617

JS

VIVEK SRIVASTAVA
PRIMARY EXAMINER